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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,910	03/09/2004	Kenneth J. Michlitsch	021496-000600US	3380

40518 7590 09/27/2006

LEVINE BAGADE HAN LLP  
2483 EAST BAYSHORE ROAD, SUITE 100  
PALO ALTO, CA 94303

EXAMINER

VRETTAKOS, PETER J

ART UNIT PAPER NUMBER

3739

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/797,910	MICHLITSCH ET AL.	
	Examiner	Art Unit	
	Peter J. Vrettakos	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 13-24 and 28-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-20-05, 11-22-04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The application is published application number: 2005/0203488. The publication is classified in US 606/1.

The Applicant is requested to provide (or check for accuracy) at the beginning of the Specification updated status information (serial numbers and patent numbers) of all related applications. The effective filing date of this application 3-9-04.

Pending claims are 1-31.

Elected (traversed) claims 8-12 and 25-27 are examined below.

Non-elected / withdrawn claims are 1-7, 13-24 and 28-31.

Independent claims are 8 and 25.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 5-20-05 and 11-22-04 are being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 8-12 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (6,258,087).

Note: specific references in the patented disclosure below are not limiting to those excerpts. (The Office reserves the right in future actions to apply other excerpts, need be, from the patent.)

The patent discloses:

8. Apparatus (24) for mapping out endoluminal gastrointestinal surgery, the apparatus comprising: an endoluminal support (30) configured for endoluminal placement within a gastrointestinal lumen; and a radiofrequency element (36; col. 10:11-5) on the support for marking ("forming lesions") the gastrointestinal lumen.

9. The apparatus of claim 8 further comprising an approximation element (72) configured to approximate an interior of the gastrointestinal lumen and the endoluminal support (30). See, *inter alia*, figures 15 and 16.

10. The apparatus of claim 9, wherein the approximation element (72) is disposed on the endoluminal support (30). See, *inter alia*, figures 15 and 16.

11. The apparatus of claim 8, wherein the radiofrequency element comprises at least one electrode, the at least one electrode (66) disposed on a surface of the endoluminal support and coupleable to a radiofrequency generator (38).

12. The apparatus of claim 9, wherein the approximation element comprises an element chosen from the group consisting of suction ports (46 – aspirating apparatus), inflation elements (72 – balloon structure) and combinations thereof.

25. A method for mapping out endoluminal gastric reduction (inherent), the method comprising: advancing a radiofrequency endoluminal support into a patient's stomach (12, col. 1:24); and exposing an interior of the stomach (12, col. 1:24) to radiofrequency energy from the support at at least one specified location, wherein said exposure creates a visible marking ("lesions" are visible). See, *inter alia*, figures 15 and 16.

26. The method of claim 25 further comprising approximating the interior of the stomach (12, col. 1:24) and the endoluminal support. See, *inter alia*, figures 15 and 16.

27. The method of claim 25, wherein exposing the interior to radiofrequency energy comprises locally burning (ablating) a mucosa layer of the interior of the stomach (12, col. 1:24). See, *inter alia*, figures 15 and 16.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

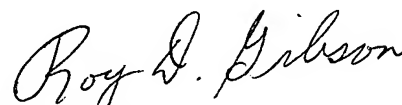
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pete Vrettakos  
September 15, 2006



  
ROY D. GIBSON  
PRIMARY EXAMINER